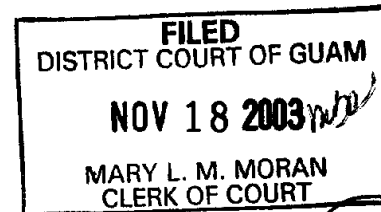


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8  
9 Attorneys for Defendants OceanAir Logistics and Lorenzo Lopez

10  
11 IN THE DISTRICT COURT OF GUAM

11 HANSEN HELICOPTERS, INC.,	)	CIVIL CASE NO. CIV02-00029
	)	
12 Plaintiff,	)	
	)	
13 vs.	)	TRIAL BRIEF
	)	OF DEFENDANTS OCEANAIR
14 OCEANAIR LOGISTICS, LORENZO	)	LOGISTICS and LORENZO LOPEZ
15 LOPEZ, and AMERICAN NATIONAL	)	
16 FIRE INSURANCE COMPANY,	)	
	)	
17 Defendants.	)	
_____	)	

18  
19 COMES NOW, Defendants OceanAir Logistics and Lorenzo Lopez (hereinafter  
20 "Defendants") and files the following as their Trial Brief:

21 FACTUAL MATTERS

22 In April 2002, Plaintiff Hansen Helicopters, Inc. (hereinafter "Plaintiff") contracted with  
23 the Defendants to arrange for the shipment of a helicopter and other used equipment from the  
24 Mainland, U.S. to Guam. The Defendants did so.

25  
26 ///

27 ///

28  
ORIGINAL

5 Although, not specifically requested by Plaintiff, Defendants did arrange for insurance on  
6 the used goods. That insurance policy contained a Free From Particular Average Endorsement  
7 which reads as follows:

8 "Warranted Free from Particular Average unless the vessel or craft  
9 be stranded, sunk or burnt, but notwithstanding this warranty the  
10 Assurer to pay any loss or damage to the interest Insured which may  
11 reasonably be attributed to fire, collision or contact of the vessel  
12 and/or conveyance with any external substance (fee included) other  
13 than water, or in discharge of cargo at port of distress."

14 The insurance policies for used goods that are being shipped by vessels almost always  
15 contain such an endorsement.

16 A copy of the Binder for the insurance coverage was sent to Plaintiff and no objection was  
17 voiced.

18 Plaintiff contends that the helicopter was damaged while being shipped.

19 The insurance company declined coverage because, among other things, of the Free From  
20 Particular Average Clause and because Plaintiff had accepted the policy.

### 21 NEGLIGENCE

22 In order to prove that Defendants negligently caused harm to Plaintiff, the Plaintiff must  
23 prove that Defendants had a duty to Plaintiff procure insurance complained of, that is an all risk  
24 insurance policy.

25 ///

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27 ///

28

5 **FRAUD AND MISREPRESENTATION**

6 In order to prove that Defendants defrauded Plaintiff, the Plaintiff needs to prove that  
7 Defendants intentionally told the Plaintiff that it would obtain the all risk insurance, knowing that  
8 it would not, and did not do so, or prove that Defendants told the Plaintiff that the insurance would  
9 have specific provisions knowing that the insurance did not. 18 GCA §85308, 18 GCA §90102,  
10 and 18 GCA §90103.

11 A mere promise to do something in the future is not fraud unless the Promisor had no  
12 intention to perform it. Miller v. San Francisco, 187 A2d 480, 9 Cal.Rptr. 767.

13 The same showing must be made with respect to any misrepresentation claim. That claim  
14 is really aspecies of fraud.

15 Plaintiff must also prove that it relied on such a representation. However, Plaintiff accepted  
16 the policy.

17 **UNJUST ENRICHMENT**

18 It is standard industry practice for freight forwarders to charge for insurance at their own  
19 rate. Defendants did so and Plaintiff accepted the charge for the insurance it also accepted.

20 **DAMAGES**

21 If Plaintiff proves liability, then Plaintiff is entitled only to the actual damages that Plaintiff  
22 incurred. 18 GCA § 90102. Only in the most extraordinary of circumstances is Plaintiff entitled  
23 to any other damages, Plaintiff must prove Defendants acted with "oppression, fraud, or malice".  
24 20 GCA §2120.  
25  
26  
27  
28

**CONCLUSION**

Plaintiff cannot prove any basis for recover.

Respectfully submitted this 22 day of November 2003.

**ZAMSKY LAW FIRM**  
**Attorneys for Defendants**  
**OceanAir Logistics and Lorenzo Lopez**

By:   
STEVEN A. ZAMSKY

**DECLARATION OF SERVICE**

I, Steven A. Zamsky, hereby declare under penalty of perjury of the laws of the United States, that on the 18 day of November 2003, I caused to be served by hand delivery a true and correct copy of the foregoing **TRIAL BRIEF OF DEFENDANTS OCEANAIR LOGISTICS AND LORENZO LOPEZ; DECLARATION OF SERVICE** upon **David P. Ledger, Esq., CARLSMITH BALL, LLP**, Suite 401, Bank of Hawaii Building, 134 West Soledad Avenue, Hagåtña, Guam USA 96910, Attorneys for Plaintiff Hansen Helicopters, Inc..

Dated this 18 day of November 2003.

  
STEVEN A. ZAMSKY

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